

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-161736-001 DT  
CR2006-103378-001 DT

01/13/2009

HON. SALLY S. DUNCAN

CLERK OF THE COURT  
M. Cabral  
Deputy

STATE OF ARIZONA

CHRISTINA HENDERSON

v.

JASON BRADLEY WHARTON (001)

MICHAEL G BAILEY

APO-CCC  
PRETRIAL SERVICES AGENCY-CCC  
VICTIM SERVICES DIV-CA-CCC

TRIAL MANAGEMENT CONFERENCE/  
TRIAL ORDERS/  
NON-WITNESS VIOLATION HEARING CONTINUED

8:46 a.m. This is the time set for Comprehensive Pretrial Conference in CR2008-161736-001DT and Non-Witness Violation Hearing in CR2006-103378-001DT.

State's Attorney:	Mary McGary
Defendant's Attorney:	Michael Bailey
Defendant:	Present
Court Reporter:	Scott Kindle

With respect to CR2006-103378-001DT:

Discussion is held re: Adult Probation Department Memorandum dated January 7, 2009.

Based on the discussions held on this date,

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IT IS ORDERED that Defendant shall not report to Pretrial Services. Defendant shall report to his Probation Officer, Danielle Chacon.

IT IS FURTHER ORDERED continuing Non-Witness Violation Hearing to **February 24, 2009 at 8:30 a.m. and March 3, 2009 at 10:30 a.m.** in this division.

IT IS FURTHER ORDERED affirming prior release orders.

With respect to CR2008-161736-001DT:

Status of the case is discussed.

Based on the discussions held on this date,

IT IS ORDERED that the parties shall participate in a settlement conference on or before February 3, 2009.

IT IS FURTHER ORDERED setting this matter for Trial Management Conference on **February 24, 2009 at 8:30 a.m.** in this division.

IT IS FURTHER ORDERED setting this matter for Trial on **March 3, 2009 at 10:30 a.m.** in this division.

Estimated length of trial: 5 days

IT IS FURTHER ORDERED that the Joint Pretrial Statement (JPTS) is due in this division by 5:00 p.m., **five (5) judicial days before the TMC.**

IT IS FURTHER ORDERED that any disclosure and/or discovery shall be completed no later than seven (7) days prior to trial. Any party seeking further disclosure and/or discovery after the discovery deadline shall seek leave of the Court by motion supported by affidavit to extend the time for disclosure and/or discovery. Parties may extend the deadline by written stipulation which waives any objections to the late disclosure and/or discovery.

IT IS FURTHER ORDERED with the JPTS, Counsel shall deliver to this division, copies of the following:

- A. **A jointly-completed time and witness estimate list.** The Court will use the list to predict the length of the trial for the jurors and to direct Counsel to follow the

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trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.

- B. **A joint set of agreed-upon preliminary and final jury instructions**, including Preliminary Criminal RAJI or standard RAJI.
- C. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993). **Proposed voir dire questions** which the Court will give. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of *voir dire*.
- D. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents in evidence is necessary. Key exhibits may be included, along with diagrams, photographs, and timelines.

**MOTIONS IN LIMINE**

Any motions *in limine* shall be filed thirty (30) days before TMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): **"The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial."** See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion *in limine* may be filed no later than ten (10) days thereafter. The Court will rule on the motions *in limine* without oral argument. If the Court wishes to hear argument, the argument will be heard at the morning of TMC.

**PRETRIAL MOTIONS**

All pretrial motions must be filed in writing twenty (20) days before the TMC. All motions must comply with Rule 35.1 including setting forth a sufficient factual basis for the motion. Failure to file a sufficient motion may result in the motion being denied without evidentiary hearing. See: *Rule 16.1[c] Rule 16.2[b]*; *State v. Anaya* 170 Ariz. 436, 443 (1992); *State v. Wilson* 164 Ariz. 406, 407 (1990) and *State v. Alvarado* 121 Ariz. 485 (1979).

**MARKING EXHIBITS**

**At least three (3) judicial days before the TMC**, the trial lawyers or their knowledgeable assistants shall appear in this division to present all exhibits. The parties

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shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. ***Counsel is directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.*** Written stipulations to admit specified exhibits in evidence are encouraged.

IT IS FURTHER ORDERED that counsel, at the TMC, shall be prepared to discuss:

- A. Time limits in *voir dire*, opening statements, examination of witnesses and closing arguments.
- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and *voir dire*.
- D. Any special scheduling or equipment issues.
- E. Status of settlement of the case.

**EXPEDITED DISCOVERY**

If there are any issues as to the disclosure required under Rule 15, the parties shall attempt to resolve the issue under Rule 15.7 (b). After personal consultation the party seeking relief shall fax or e-mail a one page letter seeking forth the issue and counsel requested relief. The Court will convene a conference to resolve the issue.

A DEFENDANT'S FAILURE TO APPEAR AT THE FINAL TRIAL MANAGEMENT CONFERENCE, TRIAL, EVIDENTIARY HEARING, OR ANY HEARING SET BEFORE THE COURT MAY RESULT IN A BENCH WARRANT BEING ISSUED FOR HIS OR HER ARREST AND THE FINAL TRIAL MANAGEMENT CONFERENCE, TRIAL, EVIDENTIARY HEARING OR ANY HEARING SET BEFORE THE COURT MAY BE CONDUCTED IN THE DEFENDANT'S ABSENCE.

THE TRIAL DATE SHALL NOT BE CONTINUED UNLESS A WRITTEN MOTION TO CONTINUE IS FILED AT LEAST 5 DAYS BEFORE THE TRIAL. A CONTINUANCE WILL NOT BE GRANTED UNLESS THE MOTION SHOWS THAT EXTRAORDINARY CIRCUMSTANCES EXIST. (Rule 8.5, Rules of Criminal Procedure and guidelines thereto.)

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NOTICE: IT IS THE RESPONSIBILITY OF COUNSEL TO NOTIFY THE COURT BEFORE WHICH A HEARING WILL BE HELD 48 HOURS IN ADVANCE OF ANY HEARING NEEDING AN INTERPRETER FOR A VICTIM OR A WITNESS (10 BUSINESS DAYS FOR ANY LANGUAGE OTHER THAN SPANISH.)

IT IS FURTHER ORDERED affirming prior release orders.

**LAST DAY REMAINS: 03/19/2009**

8:51 a.m. Matter concludes.

FILED: Adult Probation Department Memorandum